IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6132 of 2001

Date of Decision: 06-10-2005

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INDRAJEET R GOSWAMY - Petitioner
Versus
UNION OF INDIA & ANOTHER - Respondent

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[See Next Page for Full Title]

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice

The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for Reporting?

For Petitioner:

MR PR NANAVATI

For Respondents:

MR MUKESH A PATEL

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PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Through this Special Civil Application, orders of Central Administrative Tribunal (for short `CAT'), Ahmedabad Bench, dated

==========Whether Reporters of Local Papers may be allowed to see the Judgment?

15.02.2001 in Original Application (for short `O.A.') No.461 of 1998 with Miscellaneous Application No.533 of 1999 and Review Application No.32 of 2001 in O.A. No. 461 of 1998 dated 30.04.2001, are challenged.

2. Shortly stated, petitioner was Grade I Fitter under Chief Works Manager, Engineering Workshop, `D' Cabin, Sabarmati, Western Railways. He applied for the post of Chargeman Grade-B, notified by Railways for four vacancies vide order dated 21.10.1991. Along with eligible candidates, he appeared in the written test followed by oral interview. On completion of selection, Railways prepared a panel of four employees, namely, Shri Jitendra Kumar K. Dave, Shri Surjit Singh J. Shri Mahesh J. and Shri Indrajit R. Goswamy vide order dated 25.10.1993. In the order of merit, petitioner was at No.4 in this panel. This selection was challenged by Shri Surendra Kumar M. Jain, one of the eligible candidates for the post, before the CAT through O.A. No.36 of 1994, claiming that since he had

secured more marks than the petitioner, he should have been included in the panel, instead of petitioner. Petitioner was impleaded respondent-3 in this O.A., which was disposed of by order dated 12.10.1994. The finding is that Shri Surendra Kumar M. Jain secured more marks than the petitioner. The operative part of CAT order is:

> "***9. In view of the reasoning above, we quash the selection panel of 25.10.1993 at Annexure A-9 and direct the respondent No.2 to declare the selection as per the actual marks obtained by the applicant vis-a-vis respondent No.3. After the selection, the respondents are also directed to send the applicant for necessary training and placement as per this selection list. No order as to costs".***

This order became final, because it was not challenged by the petitioner, although it was challenged by Railways before the Apex Court, which dismissed S.L.P. No.10727-28 of 1995 on 18.09.1995.

3. Shri ***Jitendra Kumar K. Dave, who was one of the candidates in the panel, failed in the training twice, therefore, he was reverted to original post. Petitioner filed O.A. No.843 of 1995 before the CAT seeking appointment against***

the post of Shri Jitendra Kumar K. Dave. However, CAT by order dated 19.03.1996 directed the respondents to decide the representation of the petitioner. Accordingly, the General Manager considered the representation and decided it by order dated 10.01.1997 holding that petitioner was not in the panel, therefore, he could not be appointed and the vacancy would be filled by fresh process of selection. The order passed by the General Manager is quoted:

> *"The representation of Shri Indrajit Goswami has been examined in detail by the competent authority and based on the above following is observed:-*
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> *1. "As regards request of Shri Indrajit Goswami for inclusion of his name in the panel in view of J.K.Dave's failure in retention test in terms of CAT-ADI's order dated 19.03.96 in OA No.843/95, it is stated that as per rules, panel should not exceed the Nos. of assessed vacancies.*
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> *The vacancies assessed were 04 Nos. and four persons have been empanelled. Failure of Shri J.K. Dave, in retention test is an after-event of forming of panel and vacancy arising out of his failure in the retention test is to be filled in the subsequent selection under normal rules. In view of this Shri Indrajit Goswami has no claim or right for inclusion of his name on the revised panel frames in terms of CAT-ADI's judgment in OA No.36/94 filed by Shri S.M. Jain".*
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> *In view of the above rule position, request of the applicant made vide his representation dated 15.4.96 can not be acceded to. Hence it is regretted."*

Again, the petitioner assailed the order of General Manager, through O.A. No.292 of 1997. It was disposed of as withdrawn by order dated 13.11.1997 directing the petitioner to make representation to General Manager and General Manager to decide the same by speaking order. General Manager decided the same on 07.05.1998. This order has been challenged through O.A.No.461 of 1998, out of which the present petition arises.

4. In substance, the submission of petitioner is that he formed part of the first panel, therefore, after the exit of Shri Jitendra Kumar M. Dave, he ought to have been appointed. Reference is made to Rule 220 of Indian Railway Establishment Manual, Volume-I (Revised Edition-1989), prescribing the period of panel for two years from the date of approval by the competent authority or till these are exhausted, whichever is earlier. Shri Mukesh A. Patel, learned counsel for Railways, submits that after the panel was quashed by the CAT,

fresh panel was prepared in which petitioner does not figure because panel was to be of four persons and simply because Jitendra Kumar K. Dave failed to pass the training and reverted to the original post, petitioner does not come in the panel, therefore, Rules will apply to a panel, which is surviving. But, here is a case, where the panel was of four persons, which stood exhausted by the appointment of all the four candidates. Subsequent vacancy is to be filled up by recourse to normal procedure of selection. We find substance in the contention raised by Shri Patel, therefore, proceed to hold that the panel of selection in which petitioner figured stood quashed by CAT. In the fresh panel, petitioner does not figure, therefore, he is not entitled to appointment. When the panel stood exhausted by appointment of all the four members of the panel, subsequent vacancy has to be filled up in accordance normal selection procedure. Petitioner contends that he was permitted to

complete the training. This was done during the pendency of the case before the CAT. Obviously, it was subject to the ultimate outcome of the case, which went against the petitioner, therefore, completion of training would not entail him any benefit for appointment.

5. Therefore, we hold that the Tribunal has dealt with the matter quite comprehensively and we are in agreement with the conclusions drawn by it. There is no merit in this petition and the same is dismissed. Rule is discharged. Parties to bear their own costs.

(BHAWANI SINGH)
Chief Justice

(H.K. RATHOD)
Judge

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